

## BASIC VICTIM SERVICES IN A PROSECUTOR'S OFFICE



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## TOPICS FOR TODAY

- ▶ Who is a "Victim"
- ▶ What the Law Requires
- ▶ Statutory Duties
- ▶ Victim Impact Statements
- ▶ Victims Rights
- ▶ "When Working With Victims"
- ▶ Where are the Good Guys



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## WHO IS A VICTIM ARTICLE 56.01, CCP

"Victim" means a person who is the victim of the offense of **sexual assault**, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another.



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## DEFINITION OF SEXUAL ASSAULT

### Old Law

► Includes an offense under Sec. 21.02, Penal Code

► Continuous Sexual Abuse of a Young Child or Children – committing acts of sexual abuse

- Agg Kidnapping w/ intent to commit sexual assault
- Indecency w/ Child
- Sexual Assault
- Agg Sexual Assault
- Burglary w/ intent to commit sex asslt
- Sexual Performance by a Child
- Trafficking of Persons
- Compelling Prostitution

### New Law

► Means an offense under Sec. 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code

- Continuous Sexual Abuse of a Young Child or Children (and all included offenses)
- Indecency with a Child
- Sexual Assault
- Aggravated Sexual Assault




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## GUARDIAN OF A VICTIM

A person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the victim.




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## “VICTIM” INCLUDES A CLOSE RELATIVE OF A DECEASED VICTIM

A person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.




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## WHAT THE LAW REQUIRES



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## VICTIM ASSISTANCE COORDINATOR

### ARTICLE 56.04, CCP

*Prosecuting attorney shall designate a person to serve as victim assistance coordinator in that jurisdiction.*

- ▶ The duty of the VA coordinator is:
  - ▶ to ensure that a victim is afforded the rights set out by CCP Article 56.02
  - ▶ shall work closely with law enforcement, prosecuting attorneys, the Board of Pardons and Paroles, and judiciary in carrying out that duty



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## ARTICLE 56.04 CONTINUED

- ▶ VAC is responsible for getting a copy of the VIS to the sentencing court for inclusion in the defendant's commitment papers.
- ▶ If authorized by Commissioners Court the VAC may offer post-trial counseling (up to 10 hours) for jurors in any trial that involved graphic evidence or testimony.



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## STATUTORY DUTIES FOR THE STATE

[THIS USUALLY MEANS THE VAC]




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## VICTIM OF CRIME INFORMATION PACKAGE



*Provided no later than the 10<sup>th</sup> day following the return of an indictment or information*

- ▶ Victim Impact Statement
- ▶ Victims Bill of Rights
- ▶ Crime Victims Compensation application
- ▶ Name, address and phone of local VAC
- ▶ Case number and assigned court for the case
- ▶ Victims Information Booklet (general explanation of the criminal justice system)

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## STATE MUST PROVIDE VARIOUS WRITTEN NOTICES

- ▶ Brief statement about processing of a case
  - ▶ Includes bail, pleas, parole, restitution & appeals
- ▶ Suggested steps if victim is subjected to threats or intimidation
- ▶ Offer to assist in the completing of the forms
- ▶ Explanation of the possible use and consideration of the VIS




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## ADDITIONAL NOTICES

- ▶ Notification of the right of victim to appear before member of Board of Pardons & Paroles.
- ▶ Statement indicating costs for a medical exam after a sexual assault will be paid by law enforcement.
- ▶ Referral to social service agencies are available.




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## NOTICE OF PLEA BARGAIN AGREEMENTS

- ▶ As far as reasonably practical, must give the victim notice of and terms of any plea bargain agreement to be presented to the court
- ▶ Statement describing plea agreements:
  - ▶ The State:
    - ▶ VIS will be considered by the prosecutor in entering into the plea bargain
  - ▶ The judge:
    - ▶ Before accepting the plea bargain will ask if a VIS has been returned, and if so, request a copy
    - ▶ Whether the State has provided the victim notice of and terms of the plea bargain agreement (Art. 26.13 CCP)

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## OUR WORK IS NEVER DONE

- ▶ If requested by victim, a VAC must provide
  - ▶ Notice of scheduled court proceedings
  - ▶ Changes in that schedule
  - ▶ Filing of any request for continuance
- ▶ **Victim** must keep State and TDCJ updated with current address and phone number
- ▶ Forward victim's info to Probation Office
- ▶ Provide quarterly VIS statistics to CrimeVictim Clearinghouse




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# VICTIM IMPACT STATEMENTS



Texas Department of Criminal Justice  
Victim Services Division  
<http://tdcj.state.tx.us/divisions/vs/index.html>

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# VIS – THE PURPOSE

## ARTICLE 56.03, CCP

The Victim Impact Statement provides an opportunity for the victim, close relative of a deceased victim or guardian of a victim to describe how the offense affected him/her **physically, financially, and emotionally.**



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# VIS – REQUIRED INFORMATION

1. Name
2. Address and telephone number
3. Statement of Economic Loss
4. Statement of any physical or psychological injury (described by victim, doctor or counselor)
5. Statement of any psychological services requested
6. Statement of any change in personal welfare or familial relationship

7. Statement as to whether the victim wishes to be notified in the future of any parole hearings and an explanation of those proceedings.
8. Any other info, other than the facts of the case, related to the impact of the crime on the victim
9. If the victim is a child, are there existing court orders granting the defendant possession of or access to the victim.



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**NEW CHANGES TO OUR LAW  
REGARDING THE VIS AND THE COURT  
ARTICLE 56.03 (e), CCP**

<p><u>Old Law</u></p> <p>► Prior to the imposition of a sentence by the court in a criminal case, the court, if it has received a VIS, shall consider the information provided in the statement.</p>	<p><u>New Law</u></p> <p>► Prior to the imposition of a sentence by the court in a criminal case, the court shall <u>inquire as to whether a VIS has been returned to the attorney representing the state, and if a VIS has been returned to the State</u> consider the information provided in the statement.</p>
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**NEW CHANGES TO OUR LAW  
REGARDING THE VIS AND THE COURT  
ARTICLE 56.04 (e), CCP**

<p><u>Old Law</u></p> <p>► The VAC shall send a copy of the VIS to the court sentencing the defendant.</p>	<p><u>New Law</u></p> <p>► On inquiry by the court, the <u>attorney representing the state shall make available</u> a copy of the VIS for consideration by the court sentencing the defendant.</p>
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**NEW COURT ACTIONS AND THE  
VIS  
ARTICLE 42.01, CCP**

Change to the Judgment

► Sec. 11. In addition to the information described by Sec. 1, the judgment should reflect whether a Victim Impact Statement was returned to the attorney representing the state pursuant to Art. 56.03(e), CCP.




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## ADDITIONAL COURT ACTIONS AND THE VIS



- ▶ The court may only inspect the VIS after a finding of guilt or deferred adjudication is ordered
- ▶ A victim impact statement is subject to discovery under Article 39.14, CCP before the testimony of the victim is taken only if the court determines that the statement contains exculpatory material.

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## ADDITIONAL COURT ACTIONS AND THE VIS

- ▶ Before sentencing the defendant, the court shall permit the defendant or his counsel a reasonable time to read the statement, ***excluding the victim's name address and telephone number.***
- ▶ The defense may comment on the statement, and, with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the statement.

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## MORE NEW CHANGES TO OUR LAW REGARDING THE VIS

### ARTICLE 56.04 (e) CCP

- ▶ If the defendant is sentenced to community supervision the attorney representing the state shall forward the VIS to the probation dept. [Previously ordered the court.]
- ▶ If the defendant is sentenced to TDC the court should attach the VIS to the defendant's commitment papers.




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**VICTIMS RIGHTS**  
ARTICLE 56.02 CCP




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**VICTIMS BILL OF RIGHTS**



- ▶ Know and understand the victims rights.
- ▶ Use due diligence to make prosecutors aware of these rights.
- ▶ Exercise your greatest efforts to insure that victims are afforded their rights!

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**CHANGES TO VICTIMS' RIGHTS**  
ARTICLE 56.02, CCP



- ▶ Art. 56.02 (a)(1-15), CCP listed our Victims' Bill of Rights
- ▶ SB 1192 created a new section of Chapter 56 – Art. 56.021, CCP
  - ▶ Rights specifically for sexual assault victims that are in addition to Art. 56.02
- ▶ Removed Victims' Rights number 11 and 14 in Art. 56.02 and moved them to Art. 56.021.
  - ▶ #11 – right to counseling regarding AIDS and HIV and testing for related diseases
  - ▶ #14 – right to a forensic medical exam within 96 hours of a sexual assault, whether the offense is reported to law enforcement or not

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## RIGHTS OF A VICTIM OF SEXUAL ASSAULT

### ARTICLE 56.02I, CCP

- ▶ If the offense is a sexual assault, in addition to Art. 56.02, CCP
  - ▶ For the victim
  - ▶ For the guardian of the victim
  - ▶ For the close relative of a deceased victim



#### If Requested –

- ▶ Right to a disclosure of information regarding any evidence that was collected during the investigation of the offense
  - ▶ Unless disclosing would interfere with the investigation or prosecution of the offense
  - ▶ If so, the victim shall be informed of the estimated date when the information is expected to be disclosed
- ▶ Right to disclosure of information regarding the status of any analysis being performed on any evidence collected during the investigation

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## ARTICLE 56.02I, CCP CONTINUED

#### If Requested –



- ▶ Right to be notified:
  - ▶ At the time a request is submitted to a crime lab to process and analyze any evidence that was collected during the investigation
  - ▶ At the time of the submission of a request to compare any biological evidence collected during the investigation with DNA profiles maintained in a state or federal DNA database
  - ▶ Of the results of the comparison described above, unless disclosing the results would interfere with the investigation or prosecution of the offense, if so, the victim shall be informed of the estimated date when the information is expected to be disclosed
- ▶ Right to counseling regarding AIDS and HIV infection

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## ARTICLE 56.02I, CCP CONTINUED

- ▶ For the victim of the offense, testing for AIDS, HIV and other related infectious diseases (*no. 11 from Art. 56.02*)
- ▶ The right to a forensic medical examination within 96 hours of the offense whether the offense has been reported to law enforcement or not (*no. 14 from Art. 56.02*)
- ▶ Individual who requests notification of lab processing submission, comparison of DNA profiles and results must provide a current address and phone number to the attorney for the state and law enforcement; and must inform them of any change to that information
- ▶ That individual may designate a person, including an entity that provides services to victims of sexual assault, to receive any notice requested above.
- ▶ Became effective September 1, 2013




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## CHANGES TO VICTIMS' RIGHTS

### ARTICLE 56.02, CCP

HB 899 added a new enumerated right of a victim concerning DIVO.  
Defense Initiated Victim Outreach

- ▶ If the offense is a capital felony, the right to:
  - ▶ Have the court mail a written explanation of DIVO if the court has authorized expenditures for a DIVO specialist
  - ▶ Not be contacted by DIVO specialist unless the victim has consented to the contact by providing written notice to the court
  - ▶ May designate a victim service provider to receive all communications from a DIVO specialist acting on behalf of any person




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## VICTIMS RIGHT TO SPEAK AFTER PUNISHMENT

### ARTICLE 42.03 (1) (B), CCP

- ▶ Provides victims of violent crime the right to speak in court after punishment has been assessed
- ▶ The victim's remarks are limited to the victim's views about the offense, the defendant and the effect of the offense on the victim.
- ▶ Although the victim may address both the court and the defendant, the victim may not ask any questions of the defendant.
- ▶ The court reporter may not transcribe the victim's statement, and the statement may not be made until after the sentence has been pronounced.

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## VICTIM NOTIFICATION OF RELEASE

### ARTICLE 46C.003, CCP

Victim notification of release of a defendant found not guilty by reason of insanity:

- ▶ It is the clerk of the court's duty to notify the victim, guardian or close relative of the release using the contact information available in the VIS provided to the court.
- ▶ On request, a Victim Assistance Coordinator may provide the clerk of the court with information or other assistance necessary for the clerk to comply with this article.




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**WHEN WORKING WITH VICTIMS**  
Always Remember ...

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**ALWAYS REMEMBER**

- ▶ You're in control, but everyone needs to be treated with respect, dignity and professionalism
- ▶ You are not always able to "fix" the problem – your role is to offer support, be empathetic and listen
- ▶ Provide as much information as possible, and explain the process



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**DON'T FORGET**

- ▶ Don't make promises you can't keep
- ▶ Document your conversations and meetings with victims
- ▶ Provide referrals to local social service agencies – you can't do this alone
- ▶ It's okay to not have all the answers!



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**WE ARE NOT ALONE!**  
**FIND YOUR CRIME VICTIM ADVOCATES**

▶ Law Enforcement	▶ Social Services
▶ Prosecution	▶ TDCAA
▶ Probation Department	▶ Victim Services Director
▶ Office of the Attorney General- Crime Victim Services Division	▶ Victim Services Board
▶ Crime Victim's Compensation	▶ Website
▶ Sexual Assault Prevention and Crisis Services	▶ TDCJ-
▶ Grants and Contracts Mgmt	▶ Victim Services Division
▶ Victim Notification (VINE)	▶ Crime Victim Clearinghouse
	▶ Immigrant Services



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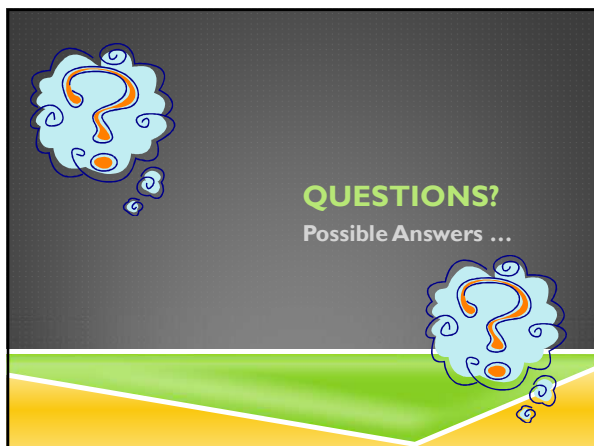
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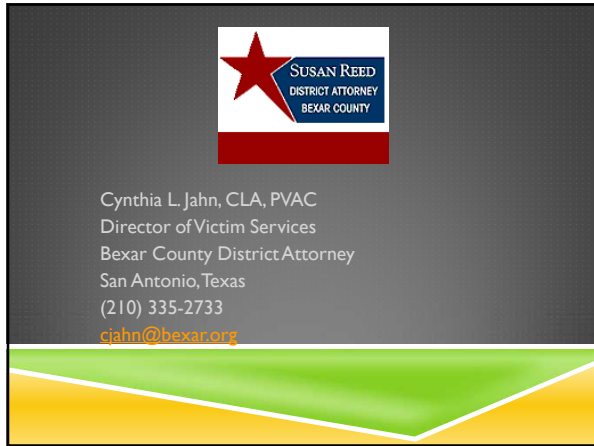
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